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## Social norms, law and the welfare as means of social control : case study of Mahalla Institutions in Uzbekistan

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Title: Social Norms, Law and the Welfare as Means of Social Control: Case Study of Mahalla Institutions in Uzbekistan by Rustamjon Urinboyev

## 1. Background and Central Argument

The Republic of Uzbekistan became an independent state in 1991 following the collapse of the Soviet Union. As a newly-independent state, Uzbekistan proclaimed the creation of a secular democratic society based on the ideals of democracy, free market, social justice, and universal human rights.<sup>1</sup> The adoption of new Uzbek Constitution in 1992 has laid the foundations for the creation of a democratically-oriented public administration system by dismantling the previous communistic-type centralized system of administration. Newly-established system of public administration clearly demarcated the lines between legislative, executive and judicial powers. Public administration system is comprised of two tiers, central and local (Bektemirov & Rahimov, 2001).

Like other post-Soviet states, during early years of independence Uzbekistan faced with the necessity of re-designing its economic and social policies. While struggling to develop market economy, Uzbekistan simultaneously strived to retain Soviet type generous social welfare system, given the political instabilities during the transition period. However, Uzbek government had to move from the Soviet-type generous social policy to means-tested system. The preservation of Soviet type generous social welfare system was fiscally unaffordable task, since the tax revenue was very little compared to the scope of welfare programs promised by the government. Besides, the living standard of people has fallen dramatically and number of people claiming the social welfare benefits has increased accordingly. Constrained by scarce financial resources, Uzbekistan tried to re-design its social protection system with the aim of targeting welfare benefits on the most vulnerable groups in the society (Coudouel & Marnie, 1999). In the same vein, Uzbek government has revised its legal system and institutions in an effort to tackle these barriers and create conditions for stable nation building process. For a brief period during the first stages of nation building process there was a widespread assumption that Uzbekistan would be able to build democratic institutions and market-based economy through revitalizing its pre-Soviet historical institutions and popular traditions. Accordingly, pre-Soviet Mahalla institutions<sup>2</sup> presented themselves as feasible solution for promoting economic efficiency, social order and political stability. As citizen's local self-government institutions, mahallas have been tasked to target social welfare benefits and to preserve social order. As David Abramson noted, "beginning in the late 1980s and intensifying in the 1990s, the Uzbek mahalla became the centerpiece of a state -sponsored campaign to transfer responsibilities for welfare and other social services onto local shoulders" (David M. Abramson, *Constructing Corruption*, supra note 109, as quoted in Sievers, 2002, p. 144). Thus, mahalla became and is still the main institution addressing the state-society relations in Uzbekistan.

Before the advent of independence, the governance of mahallas was based on informal system. Mahallas heavily relied on social norms and customs to enforce the cooperative behavior among residents. The adoption of the *Law on Institutions of Self-Government of Citizens* in September 1993, and April 1999 (hereinafter Mahalla Law) has strictly formalized the activities

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<sup>1</sup> See The Constitution of the Republic of Uzbekistan. arts. 7, 13, 14, 18.

<sup>2</sup> Mahalla is an Arabic word meaning "local community" and alludes to a group of people residing in a specific territory. See Bektemirov, K., & Rahimov, E. (2001). Local Government in Uzbekistan. In V. M. Popa, I (Ed.), *Developing New Rules in the Old Environment* (pp. 469-520). Budapest: LGI/OSIEurope.

of Mahalla, thereby indirectly incorporating it into the system of public administration.<sup>3</sup> Mahallas are no longer local informal institutions, now they have become the government's main agency responsible for implementing social welfare programs and maintaining social order and stability. The violation of mahalla decision is now punishable under the Mahalla Law. Thus, mahallas can now enforce both legal and social norms within its territory. In this regard, *the question arises as what effect, if any, will the elevation of social norms to laws (law from order) have on the traditional informal role and structures of mahallas.* Armed with this question, this paper tries to explore the interplay between law, social norms (social forces) and the welfare in relation to mahalla system. Another equally important purpose of the paper is to study the role of mahallas in promoting social order and political stability in Uzbekistan. In my paper I argue that mahallas, owing to their norm enforcing capacity, and to welfare provision potential, are a strong system of social control, and thereby they can promote democratic transformations or reinforce authoritarianism in Uzbekistan.

## 2. Pre-Soviet, Soviet and Post-Soviet Mahalla: Transition from "Order without Law" to "Law from Order"

### 2.1 Historical Background

*"Your homeland begins from your mahalla"*

*Folk Saying*

Historically, Uzbek mahallas have been very successful in mobilizing resources and people. They were not governmental and their activities were non-profit. The origin of Mahalla tradition dates back to pre-Mongol period, around the 11<sup>th</sup> or 12<sup>th</sup> centuries. Pre-Soviet mahallas were usually a community of several hundred people, organized around Islamic rituals and social events. Some mahallas formed along ethnic, religious or professional lines (Abramson, 1998, p. 27). Most mahallas possessed their own mosque, teahouse, bazaar and other facilities (Bogner, 2003). Pre-Soviet mahalla exhibited the features of non-governmental organizations which are relatively similar to modern NGOs in the West (Sievers, 2002, p. 110). Social norms were main basis for administration of mahallas. The elders played a crucial role in the administration of mahalla by providing advice and direction to local community (Bogner, 2003).

During the early Soviet period there were some attempts to eliminate the mahalla as an institution; but, later it became evident that such efforts would produce social unrest. As a result, Soviet government changed its strategy towards mahalla. Conversely, Soviet government tried to use mahallas for disseminating communist ideology by integrating them into the state and party structures (Abramson, 1998). As a result, mahallas served as local village councils during the Soviet period (Bektemirov & Rahimov, 2001).

However, in the final period of the Soviet Union mahallas ceased to disseminate communist ideology and returned to their traditional informal function, running in parallel with government structures (Bogner, 2003, p. 5). With the dawn of independent Uzbekistan in 1991, mahallas have become a buzzword in academic and policy debates. Almost all major public administration reforms touched upon mahalla. New Uzbek government has come to realize the significant role of mahallas in promoting social order and stability in the initial years of transition (Bektemirov & Rahimov, 2001).

### 2.2 Definition and main features of the Mahalla

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<sup>3</sup> Partial amendments to Mahalla Law were also made in 2003

Today the term “Mahalla” is commonly used in Uzbekistan to describe the neighborhood or local community which is mostly characterized by common traditions, language, religion and ethnic background. Everyone in Uzbekistan technically belongs to one mahalla (Sievers, 2002). Mahalla, in both historical and modern perspective, represents a “clearly defined socio-demographic, cultural and spiritual entity, as well as an administrative-territorial one, in which people are united by traditions, customs and human, business and legal relationships” (Bektemirov & Rahimov, 2001, p. 477). Mahalla bonds people based on the principle of common residence in a certain neighborhood with an established border<sup>4</sup>. As Sievers (2002) noted, the most universal and remarkable aspect of mahalla is that no member of the mahalla is, for class, profession, or religious reasons, excluded from community events and interactions.

There are about 12000 mahallas in Uzbekistan and each mahalla might contain 150 to 1500 households. On average, approximately 400 households reside in one mahalla (Micklewright & Marnie, 2005, p. 431). Mahalla Foundation, established in September 1992<sup>5</sup>, coordinates the activities of all mahallas throughout Uzbekistan. Sievers (2002, p. 96), differentiates rural and urban types of mahalla in post-Soviet Uzbekistan. *Rural mahallas* constitute former state and collective farms. *Urban mahallas* can be divided into *apartment mahalla* (modern apartment complexes), *contemporary mahalla* (blocks of rather wide family houses) and *traditional mahalla* (blocks of densely structured pre-Soviet single-family houses). Mahallas can also be classified according to regional, ethnic, professional and religious lines. Despite their remarkable diversity in terms of space, population and activity, mahallas adhere to a core set of understandings and practices (Sievers, 2002, p. 95). Those understandings and practices include paternalism, continuity, the power of moral example, esteem for elders and an orientation toward family values (Bektemirov & Rahimov, 2001, p. 479).

### 2.3 Legal Intervention into Mahalla

The analogue of mahalla might exist in other Eastern cultures, but what makes Uzbek mahalla unique is that it has received legal status as a citizen’s local self-government institute. As the primary self-government unit, mahallas exist throughout Uzbekistan based on the principle of decentralization (Bektemirov & Rahimov, 2001).<sup>6</sup> Uzbek government promoted traditional mahalla institute with an emphasis on the rights and obligations of local communities within a nation-state (Abramson, 1998). The Law on Mahalla (1993, 1999) defines mahalla as an “an independent activity of citizens, guaranteed by the Constitution and the Laws of the Republic of Uzbekistan, for the purpose of resolving issues of local importance according to their own interests and historical peculiarities, as well as to national traditions, spiritual values and local customs.”<sup>7</sup> Apparently, this definition implies that the mahallas are non-governmental organizations and they are not part of the system of the public administration. Since mahalla is new phenomenon to many Western scholars, the legal status of mahallas has been the object of intense discussions. The Mahalla Law defines mahallas as non-governmental organizations, but, at the same time, Mahalla Law delegates some rights and obligations to mahallas which are reminiscent of the functions of governmental agencies. Mahallas now perform wide range of state functions which were mainly implemented by specialized state agencies during the Soviet period. According to the Mahalla Law(1999), mahalla citizen assemblies nominate candidates for national and

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<sup>4</sup> See Local Government Situation and Development Prospects in the Countries of Central Asia. OSI/LGI Report (2002). Budapest.

<sup>5</sup> Presidential Decree of September 12, 1992 on Creation of Mahalla Foundation, Sharq So’zi, September 13, 1992

<sup>6</sup> After the adoption of Mahalla Law, it became very difficult to separate informal mahalla from formal law-regulated mahalla, and social norms from the law. Hence, I prefer to use the term mahalla to explain its both formal and informal features. However, Bektemirov & Rahimov (2001) referred to the term community-self government when explaining formal nature of mahalla. See Bektemirov, K., & Rahimov, E. (2001). Local Government in Uzbekistan. In V. M. Popa, I (Ed.), *Developing New Rules in the Old Environment* (pp. 469-520). Budapest: LGI/OSIEurope.

<sup>7</sup> Law on Mahalla, 1999, art.1

local elections; mahallas can give recommendations to residents regarding the organization of community events like wedding, birth and death ceremonies; a mahalla citizen assembly directly nominates candidates for district or city councils and indirectly nominate candidates for regional councils and the Parliament; mahalla can collect voluntary contributions for the purposes of enhancing the well-being of mahalla; mahalla facilitates the implementation of public policies; mahalla organizes the logistics of local visits of deputies of the parliament, regional, district and city councils; mahallas must report any illegal religious organization and assist state law enforcement bodies; mahallas also facilitate tax collection process; mahallas also facilitate the implementation of state funded programs targeted to vulnerable, such as elderly care.

Mahallas are currently run by both formal (elected according to law) and informal leader (informally chosen by residents). Prior to the legal intervention of current Uzbek government, mahallas were administered basically by three informal leaders, an aksakal (whitebeard)<sup>8</sup> and wealthy residents in the community,<sup>9</sup> and a woman leader. These informal leaders were basically responsible for organizing wedding, circumcision and funeral ceremonies, mediated disputes between residents and organized *hashar* (community mutual assistance work). However, after the adoption of Mahalla Law in 1993 (and subsequent revision of Mahalla Law in 1999), the number of mahalla leadership has doubled. Under the Mahalla Law (1999), a chairman, *rais*, which is a state employee, leads the mahalla through citizen's assembly/council<sup>10</sup> alongside with formal female leader of mahalla women's committee. Citizen's assembly (*fuqarolar yigini*) is the supreme body of mahalla, which elects chairman (rais), executive secretary, advisor and chairmen of the auditing and administrative committees of mahalla. Under the Constitution, chairman (rais) of mahalla is elected for a term of 2.5 years.<sup>11</sup> Residents over the age of eighteen are entitled to attend the citizen's assembly. Citizens exercise their right to self-governance through participating in the activities of citizen assemblies. Citizen assembly has the power to represent the interests of residents and make decisions on behalf of mahalla, which are effective on the respective territory.<sup>12</sup> In turn, citizen's assembly approves the members of assembly council (*kengash*), which includes chairman of the citizens' assembly, various advisors, chairmen of assembly commissions and the executive secretary. Citizen's assembly council implements the decisions of the citizen assembly and carries out daily self-government activities of mahallas between sessions.<sup>13</sup>

The legal intervention has also empowered mahallas to implement state's social welfare legislation. In this sense, mahallas might look as parastatal organizations from the Western perspective given the fact that they implement state's social welfare legislation. Social policy-makers in Uzbekistan found mahallas as the most effective and credible mechanism to implement welfare programs while the implementation of welfare legislation is mainly placed in the hands of specialized state agencies in the Western countries. For example, municipal social welfare committees are responsible for the implementation of social welfare programs in Sweden. Seemingly, social policy-makers in Uzbekistan assumed that mahalla based targeting of welfare benefits (means testing) is fair, and that the people who are in charge of means testing actually know what they are doing, and care about getting the benefits to the people who need them. Although Guidelines (1994; 2002) of the Ministry of Labour and

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<sup>8</sup> Aksakal is usually an older male in a mahalla chosen by consensus from his generational group for his personal reputation, intelligence, honesty, personal influence and leadership skills. Although Mahalla Law uses the terms 'aksakal' and "rais" interchangeably, but as most Uzbeks do, I prefer to use the term "aksakal" to refer to informal leader of mahalla, whereas term "rais" be referred to formal leader of mahalla, which are elected according to Mahalla Law.

<sup>9</sup> In both historical and modern context, wealthy have more prestige and authority within the community, as most of the communal activities, such as irrigation, road construction, building of mosques, etc., are mostly funded by them. In comparison to others, wealthy residents usually contribute more to overall budget of mahalla. Thus, wealthy residents have also equally influential role in decision-making process in mahalla.

<sup>10</sup> Although the Mahalla law stipulates that mahalla rais is chosen by elections, this rule is rarely fulfilled in practice. In most cases, local governor appoints the rais in an unstandardized way.

<sup>11</sup> Article 105, *supra* note 7, Constitution of the Republic of Uzbekistan

<sup>12</sup> Articles 9, 10, Mahalla Law

<sup>13</sup> Article 10, Mahalla Law

Social Protection provides detailed instructions in considering the indicators of living standards,<sup>14</sup> but guidelines do not specify the circumstances in which the benefit should be awarded. In this regard, based on their local knowledge and standards, mahallas target social assistance and child benefits to the most needy families in the community. Mahalla council (*kengash*) can make a decision, without much regard to objective criteria, which residents are entitled to receive benefits (Sievers, 2002, p. 142). Therefore, mahallas have much discretionary power over whom to grant cases, and welfare benefit can be awarded to any household which “has sound reasons for receiving it” (Micklewright & Marnie, 2005, p. 434). The final decision of the mahalla remains discretionary and no appeal mechanism available (*ibid*).

It seems that the government’s legal intervention (elevation of mahallas’ social norms to law) have greatly facilitated citizens’ self-government activities and provided mahallas with wider opportunities and autonomy. As Locke (1690) pointed out, the state enforcement of social norms is more certain and secure than private enforcement, because a written law provides canonical formulation of the underlying obligation. Mahalla has been announced as a national democratic institute which can facilitate democratic transformations in Uzbekistan. However, many western scholars and human rights groups have pointed out the negative effects of those legal interventions on mahallas. In this regard, the case of mahalla appears to be an interesting case for studying the effects of the transition from ‘order without law’ (the term is from Ellickson, 1991) to ‘law from order’ (the term is from Cooter, 1997).

### 3. Mahalla and the Welfare Pentagon

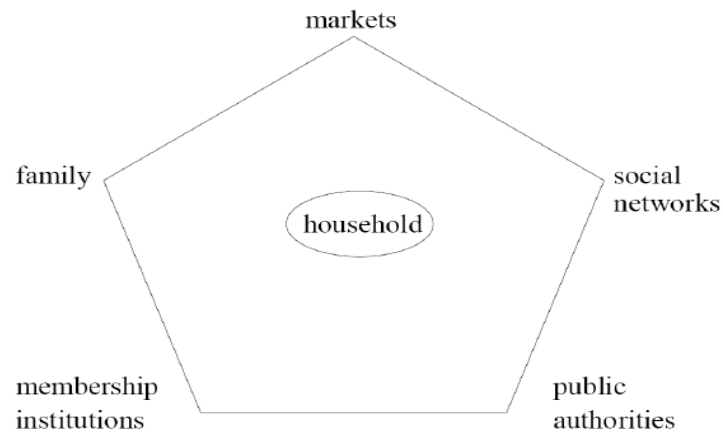
Since their inception mahallas have been very successful in maximizing the utility of their residents. The role of mahallas has considerably grown after the collapse of Soviet Union, since the newly-independent Uzbekistan could not afford Soviet type welfare system. As Sievers (2002, p. 103) noted, “the economic significance of mahallas has shifted from being a vehicle through which to amass additional or disposable wealth to a vehicle for basic survival.”. As a result of these dramatic changes, mahallas quickly assumed the functions of the welfare state and adapted to new economic conditions, thereby developing their survival mechanisms. Mahallas replaced the state as the primary provider of social guarantees and they provide extensive social services for community residents. Mahallas can offer public goods to their residents that the state is unable to afford and provide functions to stretch risks within the community (Sievers, 2002, p. 93). Mahallas provide both monetary and non-monetary (cash benefits and benefits-in-kind) types of welfare.

The welfare provision role of mahallas can be better explained by reference to the ‘Welfare Pentagon’ model, which was developed by de Neubourg (2002). According to de Neubourg (2002), the Welfare Pentagon represents the five core institutions that households may use to meet their current and future needs in a given society: family, markets, social networks, membership institutions and public authorities (see Figure 1). Despite the historical and geographical differences, these

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<sup>14</sup> As described by Micklewright, J., & Marnie, S. (2005), guidelines stipulate that, assistance should be given to: “households without the possibility to considerably raise their income by enhancing the economic activity of household members. Material assistance should be given mainly to large households with many children, households of the unemployed, households in which the main breadwinner is an invalid, who has fully or partly lost the ability to work, households who have lost their breadwinner, and pensioners living alone.” Households have to make a written application to their Mahalla or be recommended by the chairman of the Mahalla on his own initiative. A committee, composed of “the most respected citizens”, advisors to the Mahalla chairman, and representatives from local offices of the Ministry of Labour, the Tax Inspectorate, and the Ministry of Finance, then decides whether a household should qualify for assistance, and, if so, the amount to be allocated. This process includes a visit to the applicant’s home. A report is compiled on the household composition, the employment status of members, income and assets, and access to and use of private agricultural plots. Following the committee’s recommendation, a decision is taken at the next plenary session of the Mahalla, and the grounds for eligibility or refusal recorded in a special register. See Micklewright, J., & Marnie, S. (2005). Targeting Social Assistance in a Transition Economy: The Mahallas in Uzbekistan. *Social Policy and Administration*, 39(4), 431-447

# The Welfare Pentagon



**Figure 1. The Welfare Pentagon**  
Source: de Neubourg (2002)

institutions can be found in diverse appearances in all societies around the world. The access of households to the institutions and assets of the Welfare Pentagon varies across countries and over time. Public authorities (and partly market), through various social policy arrangements, are the most important player in welfare provision in the West (especially in Nordic countries), while market, family, membership institutions and social networks appear to be the largest sources of the welfare in developing/non- industrial countries. Households use the institutions of the Welfare Pentagon in their survival strategy to generate income and to smooth consumption. Labour markets, product markets and capital markets enable households to trade and exchange in order to secure resources to satisfy their basic needs at a given time. Families, social networks and membership institutions<sup>15</sup> tackle the livelihood risks through various mechanisms of solidarity. Public authorities, as the fifth corner of the Welfare Pentagon, can provide welfare to households by means of various welfare state arrangements (pensions, child benefits, maternity benefits, social assistance, unemployment insurance, and other forms of insurance), but also indirectly by enforcing contracts through judicial system, introducing legislation aimed at correcting market inequalities, and many other public policies.

Post-Soviet mahallas include all the five core institutions of the Welfare Pentagon: all the five institutions contribute to the well-being of mahalla residents. Mahalla, through enforcing its social norms, stretch the livelihood risks within the community and catalyze these institutions to produce welfare. Social safety nets of mahallas are multidimensional. Mahalla can fulfill the functions of market, provide public goods, implement state welfare legislation, and serve as social network and membership institution. Most mahallas possess such public spaces as teahouses, markets, mosques grocery stores and barbershop. Mahallas, especially in rural areas, have developed informal labour, product and capital markets. Most foreign businesses of Uzbekistan are carried out by local mahalla-based group of traders and entrepreneurs. Most agricultural products are being exported to Russia through these groups.<sup>16</sup> Mahallas fulfill the function of labour recruitment agency by providing people with seasonal jobs. Informal channels of mahallas are so extensive and comprehensive that residents can quickly get information about available job opportunities. Mahalla-based entrepreneurs, traders and brokers very often provide their co-residents with

<sup>15</sup> Membership institutions are unions, mutual insurance companies, religious organizations, co-operatives or neighborhood associations, etc. In the case of Mahalla, mosque and hashar (mutual assistance activity) can be regarded as membership institutions.

<sup>16</sup> Group of traders are especially active in the Ferghana valley. These groups mainly buy agricultural products, as cucumber, grape, peach, apple, etc from mahalla residents in relatively higher price, and export them to Russia. Local population call these groups 'rossiychilar' (Group of traders that export Uzbek agricultural products to Russia)

temporary jobs, especially during summer and autumn periods. Mahalla is also a place where people get information about possible job opportunities in Russia and Kazakhstan. Therefore, most Uzbeks succeed in finding a job in Russia and Kazakhstan due to their mahalla networks. Women derive income by sewing clothes for residents of mahalla. Residents of mahallas also exchange various goods and products among each other. In this regard, mahallas, serving as local markets, provide large number of job opportunities and facilitate the income generating strategy of their residents.

Family, social networks and mosque, or *hashar*<sup>17</sup> (as a membership institution) are inalienable elements of the mahalla. Families, social networks and membership institutions are important sources of welfare in Uzbekistan whereas these institutions have relatively limited role in most Western countries. Mahalla residents often rely on their families, social networks, mosque and hashar to meet their livelihood needs. Few weddings, emergency medical operations, university matriculations, house constructions, or funeral ceremonies occur in the life of the typical mahalla resident without some community financial support (Sievers, 2002, p. 129). According to norms of mahalla, residents should make some financial contribution to wedding expenses when they attend wedding feasts. Such type of community assistance considerably lessens the burdens of weddings on families.

Over the centuries mahallas developed tradition of mutual assistance, '*hashar*' which can be regarded as a well-established social norm. Under the absence of any legal mechanisms, mahalla residents cooperate with each other by providing labour for construction of houses, for preparation of the logistics of wedding and funeral ceremonies, and many other informal services that are necessary for human livelihood. After the adoption of Mahalla Law, hashar tradition has become a legal obligation. Formal chairman and members make use of *hashar* to encourage residents to maintain the cleanliness of streets and gutters and to improve the appearance of their mahalla on the eve of national celebrations and state holidays (Sievers, 2002). Residents gain more by engaging in mahalla activities, since the collective action lowers the transaction costs. In this sense, Posner (1996) claims that an actor will choose cooperation over independent action only if the value of the benefits exceeds the cost of cooperation. Mahalla norms encourage cooperation and solidarity, and discourage uncooperative behavior. Residents who defect from mahalla norms may face non-legal sanctions, such as exclusion and ostracism. These factors seem to explain why mahallas are so successful in providing alternative sources of welfare.

Moreover, mahallas lower the transaction costs of their residents by rendering non-compensated service to the elderly and sick, mediate domestic violence and divorce cases, and resolve various disputes between residents. Mahallas also pressure more wealthy residents to share some part of their wealth with the wider community (Bektemirov & Rahimov, 2001). As described by Sievers (Sievers, 2002), on the eve of national holidays mahalla residents collectively clean public spaces, cook national desserts for distribution to all mahalla residents, and often provide small presents to poorer residents.<sup>18</sup>

After the independence, mahallas were empowered to allocate social welfare benefits to the most needy in the community. These benefits are fully financed by the government. Through means testing method, mahallas provide welfare benefits to least well-off residents. Even though the amount of benefit is very small, they play crucial role in the survival strategy of people, especially in rural areas. In this regard, mahallas include the fifth element of the Welfare Pentagon- public authorities.

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<sup>17</sup> *Hashar* is an exceptionally an Uzbek phenomenon meaning community mutual assistance activity.

<sup>18</sup> Navruz is one of the Uzbek national holidays that mobilize people to clean mahalla, to cook desserts and to take care of poorer residents.



As it was shown above, mahallas play an essential role in the survival strategy of their residents by providing both formal and informal social safety nets. Mahallas have become an integral part of Uzbek society, since they represent all the five core institutions of the Welfare Pentagon. Similarly, mahalla has assumed the basic functions of the welfare state, which resembles the Western welfare states. One may wonder if mahallas can be called as the “fourth type of welfare state regime.”<sup>19</sup>

Mahalla can be regarded as a ‘hybrid institution’ that represents both formal and informal elements of the Welfare Pentagon. Given the effect of welfare on social control, one may guess how influential are mahallas in promoting social order and political stability and why the Uzbek government is so keen to intervene. Since mahallas serve as informal labour, product and capital markets, since mahallas provide welfare for residents through family, social networks, mosque and *hashar* (membership institution), and since mahallas distribute state’s welfare benefits, it seems an increasingly difficult task to separate mahallas’ informal structures from the state structure (or social norms from the law). In this regard, the next section of the paper will be devoted to studying the interaction between law and social norms in the mahalla system. In other words, I will try to understand how the state and mahalla interact with each other. I will also discuss the pros and cons of the fusion of social norms and law in relation to future development of mahalla.

#### 4. Social Norms in Mahalla and Their Interaction with the Law

As it was shown in the previous chapter, the welfare is a main factor which creates cooperation and solidarity in mahallas. However, it is almost impossible to maintain cooperative behavior among the residents without the enforcement of norms. Until the introduction of Mahalla Law, mahallas mainly reinforced cooperative relations among the residents through enforcing social norms (hereinafter ‘mahalla norms’). The introduction of Mahalla Law led to the fusion of mahalla (social) norms with the law, since most informal functions of mahalla had been formalized. Mahallas have become the focal point of all state and non-state functions (Sievers, 2002). Posner (2002) argues that legal intervention is necessary when non-legal means of cooperation becomes destructive or inefficient. However, the case of Mahalla was different. As Cooter (1997) claims, the state should raise social norms to the level of law and enforce them, since the state enforcement of social norms increases the ability of parties to cooperate. In the same vein, Mahalla Law has been introduced to facilitate informal role and structures of mahalla. In this context, one may wonder what effect, if any, did the legal intervention of the state have on mahallas. In this regard, this section mainly focuses on the interaction between social norms and law in the mahalla system.

##### 4.1 The interaction between law and social norms in mahalla

Today most Uzbeks identify themselves through their mahallas. Mahallas play enormous role in fostering cultural attitude of their residents. As Sievers (2002) observed, most Uzbeks reject the possibility of excluding themselves from a mahalla. There are a lot of Uzbek sayings regarding the importance of mahallas in people’s life. Mahalla norms regulate and touch upon even strictly private sphere of residents’ life, ranging from dressing styles to husband-spouse relations. The failure to comply with mahalla norms might lead to harsh non-legal sanctions, and therefore, every resident tries to conform to norms established

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<sup>19</sup> Danish sociologist, Gøsta Esping-Andersen describes three types of welfare state regimes (liberal, conservative and social democratic). However, Esping-Andersen’s typology only describes the Western world of welfare capitalism whereas the welfare systems of the developing world are mostly based on informal welfare arrangements. In this regard, I dare to call mahalla as the fourth type of welfare state regime. See Esping-Andersen, G. (1990). *The three worlds of welfare capitalism*. Cambridge: Polity Press

within the mahalla. The threat of ostracism and exclusion deters residents from violating mahalla norms.<sup>20</sup> In this connection, Posner (2002, p. 204) claims that non-legal enforcement of social norms might limit the individual autonomy and privacy, and therefore, legal interventions into community can be justified.

Gossip is one of the strongest non-legal sanctions in mahalla. Gossip is an instrument to render social influence on individual actions, especially in densely populated areas. Since most mahalla residents are highly concerned about the public opinion, they always try to avoid people's gossip. In that sense, gossip is also one of the strongest non-legal mechanisms that maintain cooperative behavior among the residents. According to mahalla norms, every mahalla member is expected to publicly mark births, male circumcision, weddings and deaths with some kind of celebration. Despite the high costs, every member of mahalla tries to conform to this norm. Residents who fail to mark any of those celebrations would be excluded from future mahalla celebrations. Social norms greatly contribute to social solidarity and order within mahallas. In this regard, Posner (2002) asserts that people, despite the high costs, give signals to each other in order to show that they belong to good type and they are cooperative partners. Signaling is the expression of conformity to social norms. Good types care more about future payoffs that are lost if the cooperation fails.

Mahalla norms even control the family issues of residents. According to mahalla norms, the youngest son inherits the family home, and older sons are supposed to move out from the house. But, in turn, youngest son must take care of his parents when they become old. Seemingly, norms somehow establish informal contract between children and parents. Mahalla will keep a close eye on the enforcement of this informal contract. In cases of defection, deviants face non-legal sanctions of mahalla, such as gossip, exclusion or even ostracism. Deviants are regarded as uncooperative partners in the community. From a social policy perspective, mahallas might look very attractive institution given their capacity to cater for old people, whereas the elderly care is the ultimate responsibility of government in many Western countries.

Posner (1996) pointed out that when dispute arises between the members of a solidary group, norms and non-legal sanctions generally resolve disputes by allocating risks and specifying means of resolution. Mahallas, in this sense, mediate the conflictual relations between residents by using their norms and non-legal mechanisms of dispute resolution. In most cases informal leader (aksakal) of mahalla mediates the disputes between neighbors, adjudicates domestic violence and divorce cases. After the Mahalla Law, formal leader of mahalla committee (legally elected leader) now have also authority to address these issues. As described by Sievers (2002), since mahalla residents are usually involved in lifelong contact, the costs of court proceedings outweigh the benefits. Mahalla's informal dispute resolution system is effective in the sense that it does not use adversarial methods while the legal mechanisms lack this. Mahalla norms also condemn those residents who use legal means of dispute resolution. Residents who turn to courts are regarded as uncooperative partner. Therefore, mahalla residents rarely turn to courts and law enforcement agencies for resolution of their disputes. However, given the fact that mahalla norms favor patriarchal relations, the state's legal intervention are necessary, especially in cases of domestic violence.

Mahalla norms regarding the relationship between husband and spouse and spouse and mother-in-law also cause concern. Mahalla norms promote the patriarchal relations in the family by encouraging submissive role of women in family. Mahalla

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<sup>20</sup> Although non-conformity does not lead to any legal sanctions, every resident tries to conform to the established rules of mahalla, because mahalla can impose non-legal sanctions on deviants. Mahalla system enables people to access various welfare pentagon institutions, but at the same time, it limits individual autonomy and privacy. In this sense, Posner argues that, *'wherever interaction is continual, dense and valuable to participants, distinctive patterns of behavior emerge. When deviations from these patterns provoke non-legal sanctions, we say that the patterns are social norms. Social norms both create options and suppress them.'* See Posner, E. A. (2002). *Law and Social Norms*. Cambridge, Mass: Harvard University Press.

norms also strictly regulate the power relations between mother-in-law and daughter-in-law. Mahalla norms establish that daughter-in-law should obey her mother-in-law. Consequently, many human rights NGO's and feminist movements are highly critical about the domestic violence cases within mahallas. Particularly, Human Rights Watch report (Bogner, 2003) indicates that mahalla norms places women in an unfavorable position. Posner (2002) argues that social norms can be undesirable, and the legal intervention to change or weaken them may be justified. To solve these problems, the state intervened into mahallas by establishing women's committee in each mahalla, but this strategy turned out to be ineffective due to lack of support from social forces. Mahalla norms are sometimes more powerful than the law.

Thus, mahallas impose wide range of non-legal sanctions on those residents who fail to conform to the cooperative requirements of mahalla life. Under mahalla norms, each resident is expected to contribute work and services during hashar, wedding and funeral ceremonies. Free riding problem almost does not exist in this case, since the transaction costs of information is very low due to heavy social interactions and integration in mahalla. The adoption of Mahalla law has also increased the scope of mahalla's social control activity. Now mahallas can also use legal sanctions to influence the behavior of their residents. In this respect, mahallas can effectively control the behavior of their residents through social norms, law and welfare. The presence of both legal and non-legal sanctions enables mahalla to suppress anti-social behavior and promote pro-social behavior. The cost of antisocial behavior is very high in mahalla system, due to the fact that deviants may not be able to access the welfare pentagon institutions of mahalla. Given the fact that they represent heavily integrated communities, mahallas can be regarded as a comprehensive system of a social control where the governmental and societal control mechanisms interact. In this regard, Robert Ellickson's (1991) concept on "elements of a comprehensive system of social control" is relevant for explaining the social control element of mahalla. Ellickson (1991) distinguishes five controllers that may be sources of both rules of behavior and sanctions that support those rules. The five controllers consist of – the actor himself, the person acted upon, social forces, non-governmental organizations, and government. These five controllers impose the following five sanctions to enforce the rules of behavior - self-sanctions, personal self-help, vicarious self-help, organization enforcement and state enforcement. Table 1 summarizes how social control labour is distributed within various controllers in mahalla.

**Table 1. Mahalla as a System of Social Control**

	<b>Controller</b>	<b>Rules</b>	<b>Sanction</b>	<b>Combined system</b>
1.	Resident	Personal ethics	Self-sanction	Self-control
2	Family	Contracts (informal)	Personal self-help	Promissee-enforced contracts
3	Informal leader (aksakal) and residents of mahalla	Social norms	Vicarious self-help	Informal control
4	Formal leader of mahalla	Organization rules (fusion of Mahalla law and social norms)	Organization enforcement	Organization control
5	Government	Mahalla law	State enforcement	Legal system

*Source: Ellickson (1991), Elements of a Comprehensive System of Social Control*

## 4.2 The effects of the legal intervention

Cooter (1996) claims that people obey laws that reproduce social norms, and are prone to disobey laws that are not compatible with social norms. In this respect, the adoption of Mahalla law can be regarded as a transition from 'order without law' to 'law from order.' The state enforcement of mahalla norms seems to follow this logic. By passing this facilitative law, the government assumed that this law will make mahalla even more efficient and legitimate institution in providing public goods to its residents. At the same time, government tried to integrate mahallas into public administration system with the aim of promoting social order in an ethnically diverse society. The architects of the Mahalla law implicitly assumed that the legal intervention do not affect local autonomy and traditional functions of mahallas (Sievers, 2002). However, the legal intervention has considerably reduced the autonomy of mahallas. As noted in the Human Rights Watch report, there is a big gap between 'law-in-book' and 'law-in-action.' Some scholars (Sievers, 2002) who studied the effects of Mahalla Law argue that the excessive legal intervention might lead to the erosion of traditional functions of mahalla, as social insurance and dispute resolution.

From human rights perspective, mahalla-based targeting of social welfare benefits could be regarded as stigmatizing, since the welfare cases are discussed and decided publicly. However, given the highly informal nature of economy, the administrative expenses of targeting through specialized state agencies might be very expensive. Therefore, social policy-makers in Uzbekistan trumpet mahalla as an effective institution to discern those who are mostly in need of social welfare benefits. In that sense the government's legal intervention into mahallas can be justified, however, the more transparent accountability mechanism should be introduced to mahalla-based social welfare scheme. In this regard, Micklewright & Marnie (2005) observed that mahallas, despite the absence of formal set of rules, delivers benefits much more frequently to the less well-off than to the better-off. However, as Human Rights Watch Report (Bogner, 2003, p. 21) indicated, sometimes mahalla committees use their discretionary power to pressure independent Muslims and women to change their behavior or to give up social assistance. Seemingly, the delegation of power to an organization raises two kinds of problems for the state: first, the group's interests do not precisely reflect the state's; second, the group helps only its members (Posner, 1996, p. 178). In this connection, Kamp (2004) claims that many mahalla committees probably do not have much incentive to be fair or accurate in means testing, but rather would have incentive for proving that their relatives need benefits more than other people do. Therefore, mahalla-based welfare allocation elicits irritable and frequent suspicions of corruption (Korotyeva & Makarova, supra note 5, as quoted in Sievers, 2002, p. 147). It is an empirical question whether or not these legislative changes can facilitate efficient and equitable implementation of social welfare programs.

The adoption of Mahalla law has drastically increased the responsibilities of mahallas. Most of mahalla's informal functions have become a formal responsibility of mahallas. Now the violation of mahalla decisions is punishable by law. The law created parallel power structures within mahalla. In fact, the activities of mahalla are heavily influenced by the district and city administrative government authorities (*hokimiyat*) and in turn, they (*hokimiyats*) are directly accountable to the central government (Bogner, 2003, p. 7). Although the chairman and members of the mahalla are elected by mahalla residents, as Human Rights Watch report (Bogner, 2003, p. 9) shows, head of the administrative government (*hokim*) either nominates the candidates for elections or the election results must be approved by the administrative government authorities. Sievers (2002, p. 119) also claims that despite the existence of elections, district/city government is actual power broker. In this regard, current administrative structure of mahalla is likely based on the interplay between formal and informal leadership. Informal leaders of mahalla assume informal leadership role in tandem with the formal mahalla leadership. This parallel power structure can be regarded as a form of mahalla resistance to the state arrogation (Sievers, 2002, p. 121). In this connection, it is becoming

increasingly difficult task to separate social norms of mahalla from its legal responsibilities, or mahalla from the state. The norm classification system by Hyden & Svensson (2008) is useful tool to understand the current formal and informal structures of mahalla. Through understanding of the essence and accident of norms it is possible to describe and categorize various norms operating in mahalla. According to Hyden & Svensson (2008), norms have three essential attributes: norms are behavioral instructions/imperatives (1), they are socially reproduced (2), and they represent the individual's understanding of surrounding expectations regarding their own behavior (3). Accidental attributes of norms include aspects like the presence of sanctions, the origin of the norm, the context or arena in which the norm is socially reproduced, if the norm is system-oriented or value-oriented, the internal functions and purposes of the norm. Finding the essences will be crucial when defining the norms whereas understanding of the accidents will help to classify norms.

Table 2. Operationalization of norm classification system in relation to Mahalla institution  
 Source: Hyden & Svensson (2008), Norm classification system

NORM TYPE	Essential Attributes			Accidental Attributes				
	Imperative	Socially reproduced	Surrounding expectations	Sanctions	Origins	Arena	System oriented	Internal functions and purposes
<b>Norm Type Legal</b>	Decisions of mahalla are legally-binding for all residents	Decisions of mahalla uniformly apply to all residents and in the entire territory of mahalla	All residents of mahalla should abide by the decisions of mahalla	Legal punishment	Parliament	Public authorities	Legal system	To facilitate citizens' self-government activities; to promote local development
<b>Norm Type Social</b>	Mahalla norms are binding for all residents	Mahalla norms are uniformly applicable to all residents and in the entire territory of mahalla	All residents of mahalla should conform to mahalla norms	Gossip, exclusion, or even ostracism (non-legal punishment)	Communications, interactions, traditions, religion, folklore, values	Mahalla	Social system	To maintain solidarity, traditions, values and morals
<b>Norm Type Economic</b>	Mahalla must accurately target state's social welfare benefits to the most needy residents using their local knowledge and standards.	Decision-making over social welfare cases should be objective, just and reasonable	Only the most needy and vulnerable residents should apply and get social welfare benefits	Inefficient and inequitable use of state resources and more poor people	Ministry of Labour and Social Protection	Public authorities	Economic system	To reduce poverty and preserve social order and stability
	Residents must contribute to mahalla either with work or cash to community activities and events	Work and cash contribution rules apply to all residents and to all community activities and events	All residents must help each other during community activities and events	Exclusion from future community activities and events (non-legal punishment)	Communications, interactions, traditions, religion, folklore, values	Mahalla	Informal economic system	To stretch the livelihood risks within the community and to maximize the utility of residents
<b>Norm Type Bureaucratic</b>	Elected chairman and members of mahalla committee administer mahalla affairs through citizen's assembly	Chairman and members of mahalla should be elected by the residents of mahalla	Chairman and members of mahalla should represent the rights and interests of residents before the government	District or city administrative authorities can dismiss chairman and members of mahalla	Parliament	Public authorities	Public administration system	To promote local autonomy and decision-making
	Aksakal of mahalla and his assistants administer mahalla affairs through informal meetings of residents	Aksakal of mahalla and his assistants should be informally elected by the residents for their personal reputation, wisdom, honesty, and leadership skills.	Aksakal of mahalla and his assistants should honestly and wisely lead the mahalla affairs, such as weddings, funerals, hashar, etc.	Residents of mahalla can dismiss aksakal of mahalla and his assistants	Communications, interactions, traditions, religion, folklore, values	Mahalla	Informal administration system	To efficiently and equitably organize daily life, community activities and events within mahalla

## Conclusion

The state's legal intervention has greatly expanded the scope of the social control function of mahallas. At a quick glance mahallas appears to be universal institute, since they can provide public goods, reduce crime rate, offer alternative dispute resolution, act as an agent against the radical Islamists and preserve Uzbek cultural values. As the study showed, the public administration reforms transformed mahallas into 'hybrid' institution, as they are now charged with enforcing both law and social norms. Mahalla has become a place where initial interaction between individual and the government occurs. Today public authorities in Uzbekistan claim that mahalla reforms have greatly improved the self-governance activities of citizens. As they further claim, the mahalla represents the National Democratic Institute, since it operates independently and is not a part of the local government system. However, these claims represent the mythological impact of legal interventions on mahallas. As the findings of this paper indicated, the principle of self-governance of mahalla is rarely fulfilled in practice. Conversely, legal interventions have transformed mahallas into the system of social control.

Despite the state's legal interventions, mahallas retained their informal role and structures, as the presence of parallel power structure shows. Informal economic activities are still widespread in mahallas. The state's legal interventions failed to mirror the actual functions and purposes of mahalla norms. Mahallas ultimately rely on social norms to preserve their solidarity, traditions, values and morals whereas the law mainly strives to use mahallas as a social control mechanism by integrating them into the system of public administration. As Posner (1996, p. 135) pointed out, the interaction between law and non-legal sanctions occurs not in a uniform and predictable way, but in a rather complex and unforeseen way. Apparently, legal norms have to compete with norms existing already in society (Hyden, 2008, p. 149). Every legal obligation provides a room for abuse. The effect of the legal intervention depends on such characteristics as political and economic system of the country. Due to the strength of social norms within mahalla, the outcome of the legal intervention became unpredictable, since the local knowledge, standards, traditions and values had influenced the application process. Given the fact that Uzbekistan has recently emerged from the central planning, the legal intervention provided expanded opportunities for corruption and authoritarianism. These are the real effects of legal interventions on mahallas. Unfortunately, legal interventions have limited the autonomy of mahallas, thereby making them as extensions of authoritarian control.

Legal interventions could have been successful if the government was selective in its intervention. Even though many human rights groups and scholars criticize mahallas, they can be functional to address group rights and interests. Mahallas have the strong potential to become places of democratic involvement. Mahallas, owing to their norm enforcing capacity and welfare provision function, still present themselves as an effective institution that have the potential to promote the law-obedient cultural attitude in the society. Mahallas can also be instrumental for a building of a modern welfare state in Uzbekistan. Mahallas can adequately distribute livelihood risks within the community, and they are credible institution to determine the burden of risks on each individual, based on their ability to shoulder. In this regard, mahallas can be places of democratic involvement or sites of authoritarianism. It is the public administration system that determines the final outcome.

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